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ISSUE NO. 15

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE CLASSIFICATION REVIEW COMMITTEE

In the matter of the amendment of ARM 6.6.8001 Classification Review Committee Agency Organization, 6.6.8202 administrative appeal of a classification decision, 6.6.8206 telephone and electronic hearings, and 6.6.8301 establishment, deletion, or revision of classifications for various industries for supplementing the NCCI Basic Manual for Workers' Compensation and Employers Liability	)))))))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 1, 2024, the Classification Review Committee proposes to amend the above-stated rules.

2. The Classification Review Committee will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Classification Review Committee no later than 5:00 p.m., Mountain Standard Time, August 30, 2023, to advise us of the nature of the accommodation that you need. Please contact Michael Craddock, Regulatory Disputes Consultant, NCCI, c/o Regulatory Operations Department, 901 Peninsula Corporate Circle, Boca Raton, Florida 33487-1362; telephone (561) 893-3820; fax (561) 893-5365; or e-mail MichaelCraddock@NCCI.com.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

6.6.8001 AGENCY ORGANIZATION (1) and (2) remain the same.

(3) Inquiries and submissions. Unless otherwise provided in these rules or by special notice, all inquiries and submissions to the classification review committee should be made to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, ~~7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235; telephone (303) 695-8888, ext. 25; fax (303) 755-6498~~ 901 Peninsula Corporate Circle, Boca Raton, FL 33487-1362; Telephone: 561-893-3820; Email: DisputeResolution@ncci.com; Fax: 561-893-5043.

AUTH: 33-16-1012, MCA
IMP: 2-4-201, 33-16-1011, 33-16-1012, MCA

REASON: This proposed rule change updates the current contact information for the National Council on Compensation Insurance.

6.6.8202 ADMINISTRATIVE APPEAL OF CLASSIFICATION DECISION (1) An employer may appeal a classification decision by filing a notice of administrative appeal. The notice of administrative appeal must contain a short statement of the reasons for the appeal and a statement of the general nature of the relief sought. An employer must request an in-person hearing simultaneously with the filing of the notice of administrative appeal. If a request for an in-person hearing is not made when the notice of administrative appeal is filed, the committee may hold a hearing pursuant to ARM 6.6.8206 in lieu of an in-person hearing.

(2) through (4) remain the same.

AUTH: 33-16-1012, MCA
IMP 2-4-201, 33-16-1011, 33-16-1012, MCA

REASON: This proposed rule change requires an in-person hearing be requested by the employer at the time of filing the Notice of Administrative Appeal, while giving the Classification and Review Committee the ability to hold an in-person hearing on its own initiative, or, if a timely in-person hearing is not requested, to hold a remote hearing. This change promotes efficiency and the ability of the committee to schedule and staff appeals hearings.

6.6.8206 ~~TELEPHONE~~ AUDIO, VIDEO, OR OTHER TELECOMMUNICATIONS TECHNOLOGY HEARINGS (1) A hearing may be held by ~~telephone conference call~~ audio, video, or other telecommunications technology or media if a request for an in-person hearing is not filed with the notice of administrative appeal.

~~(2) An in-person hearing shall be scheduled in Helena if a party makes a written request for such a hearing at least 5 days before a scheduled telephone conference call.~~

AUTH: 33-16-1012, MCA
IMP: 2-3-202, 2-4-201, 33-16-1012, MCA

REASON: This proposed rule change recognizes changes in digital technology.

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 AND PLAN NO. 3 (1) and (2) remain the same.

AUTH: 33-16-1012, MCA
IMP: 2-4-103, 33-1-115, 33-16-1012, MCA

REASON: In 2021, Item B-1444—NCCI's Basic Manual for Workers Compensation and Employers Liability Insurance introduced a new edition of NCCI's Basic Manual. Since the implementation of Item B-1444, NCCI has received valuable stakeholder feedback. Based on this feedback, NCCI is recommending additional improvements. This filing does not make any substantive changes to any

rule or classification that would result in premium impact. Item B – 1446 will provide general updates to the manual's content.

Based on additional stakeholder feedback and routine reviews of the content, it is necessary to:

- Clarify certain phraseologies
- Update format and structure of certain classifications
- Update classification content for grammatical issues

The Basic Manual for Workers' Compensation and Employers Liability (Basic Manual) incorporated by reference in this rule is supplemented by classification codes that are established, deleted, or revised in accordance with (2) of the rule and 33-16-1023(3), MCA.

NCCI has eliminated the department name Regulatory Assurance Department.

The Classification Review Committee approved proceeding to rulemaking to amend ARM 6.6.8001, 6.6.8202, and 6.6.8206, updating contact information and the appeals process, and to approve rulemaking for Item Filing B-1446 to clarify certain phraseologies, update format and structure of certain classifications, and update classification content for grammatical issues.

All changes are to be effective January 1, 2024.

For additional details on the filing see the Montana Workers Compensation Classification Review (CR) Committee Executive Summary and CR Committee materials at: https://csimt.gov/legal-investigations/public-notices/.

4. Concerned persons may submit their data, views, or arguments either orally or in writing to the CR Committee attention of: Michael Craddock, Regulatory Disputes Consultant, NCCI, c/o Regulatory Operations Department, 901 Peninsula Corporate Circle, Boca Raton, Florida 33487-1362; telephone (561) 893-3820; fax (561) 893-5365; or e-mail MichaelCraddock@NCCI.com, and must be received no later than 5:00 p.m., Mountain Standard Time, September 1, 2023.

5. If persons who are directly affected by the proposed action[s] wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michael Craddock at the above address no later than 5:00 p.m., Mountain Standard Time, September 1, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held

at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 persons based on the number of persons currently on the interested persons list.

7. The Classification Review Committee maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this committee. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the committee.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Classification Review Committee has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Mark Mattioli
Mark Mattioli
Rule Reviewer

/s/ Greg Rodifer
Greg Rodifer
Committee Chair

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, the amendment of ARM 23.3.502 and 23.3.524, and the repeal of ARM 23.3.519 pertaining to licensing operations of commercial motor vehicles	))))))	NOTICE OF PROPOSED ADOPTION, AMENDMENT, AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 4, 2023, the Department of Justice proposes to adopt, amend, and repeal the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on August 18, 2023, to advise us of the nature of the accommodation that you need. Please contact Laurie Bakri, Department of Justice, Motor Vehicle Division, 302 North Roberts, Scott Hart Building, P.O. Box 201430, Helena, Montana, 59620-1430; telephone (406) 444-3638; fax (406) 444-2086; or e-mail Laurie.Bakri2@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I RECORDS CHECK PRIOR TO PROCESSING A COMMERCIAL DRIVER LICENSE APPLICATION, ENTRY-LEVEL DRIVER TRAINING, AND DRUG AND ALCOHOL CLEARINGHOUSE (1) The department shall conduct an electronic query to the entry-level driver training provider registry before administering a commercial driver license skills test to a nonexempt applicant:

(a) for a class A or class B commercial driver license;

(b) upgrading from a class B to a class A;

(c) upgrading from a class C to a class B or A; or

(d) obtaining a passenger or school bus endorsement.

(2) The department shall conduct an electronic query to the entry-level driver training provider registry before administering a commercial driver license knowledge test to a nonexempt applicant for a hazardous material endorsement.

(3) The department may not conduct a commercial driver license skills test or a hazardous material knowledge test when the entry-level driver training provider registry does not validate the nonexempt applicant has completed the requisite entry-level driver training.

(4) Prior to issuing, renewing, transferring, or upgrading a commercial driver license, the department shall electronically query the commercial driver license drug and alcohol clearinghouse to verify the applicant is not prohibited from operating a commercial motor vehicle. The department may not issue, renew, transfer, or

upgrade a commercial driver's license or commercial learner's permit when the result from the clearinghouse indicates the driver is prohibited from operating a commercial motor vehicle.

(5) Upon receiving notification from the commercial driver license drug and alcohol clearinghouse or from the federal motor carrier safety administration that a holder of a commercial driver license or commercial learner's permit is prohibited from operating a commercial motor vehicle, the department shall downgrade the driver's commercial driver license or commercial driver's permit to a noncommercial driver license within 60 days of receiving the notification.

(6) If, after the department completes and records the downgrade of a commercial driver license or commercial learner's permit, the department receives notification from the drug and alcohol clearinghouse or the federal motor carrier safety administration that the driver is no longer prohibited from operating a commercial motor vehicle, or was erroneously identified as prohibited from operating a commercial motor vehicle, the department shall:

(a) upgrade the noncommercial license back to a commercial driver license or commercial learner's permit, as long as the term of the commercial driver license or commercial learner's permit has not expired; and

(b) expunge any reference to the driver's prohibited status from the driver's driving record if the commercial driver license or commercial learner's permit was erroneously downgraded based on a false prohibited status response or notification from the commercial driver license drug and alcohol clearinghouse or the federal motor carrier safety administration.

AUTH: 61-14-202, MCA
IMP: 61-5-110, 61-14-202, MCA

REASON: The 2023 Montana Legislature adopted Senate Bill 47 requiring the Department of Justice (DOJ) to query the Entry-Level Driver Training (ELDT) provider registry and the Commercial Drug and Alcohol Clearinghouse (DACH) under certain conditions. Senate Bill 47 requires the department to take certain actions as a result of the required queries.

The legislation authorized DOJ to adopt rules governing the administration of commercial drivers' license (CDL) tests for nonexempt applicants for a class A or B CDL, upgrading from a class B to a class A CDL, or for obtaining a passenger, school bus, or hazardous materials endorsement.

The legislation required DOJ to adopt rules which mandate checking an applicant's eligibility by electronically querying the DACH prior to issuing, renewing, transferring, or upgrading a CDL. The rules state that the department may not issue a CDL when the result from the clearinghouse indicates the driver is prohibited from operating a commercial motor vehicle. In addition, the department shall downgrade a current CDL holder's commercial driving privilege upon receiving notice the driver is prohibited from operating a commercial motor vehicle.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.3.502 DEFINITIONS Unless the context indicates otherwise, the words and phrases in this subchapter have the definitions set forth in this rule.

(1) through (20) remain the same.

(21) "Nonexempt commercial driver's license applicant" means an applicant for a commercial driver license, passenger endorsement, school bus endorsement, or hazardous material endorsement who cannot prove to the department's satisfaction that they are exempt from completing the training required as provided in 49 CFR 383.71. The department may exempt the applicant if:

(a) the department's records substantiate the applicant previously held the applicable commercial license or endorsements; or

(b) the applicant receives certification from a state where the applicant previously held the applicable commercial license or endorsement.

(21) through (27) remain the same, but are renumbered (22) through (28).

AUTH: ~~61-5-112, 61-5-125~~ 61-14-202, MCA
IMP: 20-10-103, 61-5-102, 61-5-104, 61-5-105, 61-5-106, 61-5-107, 61-5-108, 61-5-110, 61-5-111, 61-5-112, 61-5-113, 61-5-114, 61-5-115, 61-5-116, 61-5-305, 61-5-306, MCA

REASON: With the adoption Senate Bill 47 by the 2023 Montana Legislature, the Department of Justice needs to define "Nonexempt commercial driver's license applicant" to properly implement the requirements of Senate Bill 47.
The department shall conduct an electronic query to the ELDT provider registry before testing all nonexempt applicants for a class A or class B CDL, for upgrading from a class A CDL to a class B CDL, or for adding a passenger, school bus, or hazardous materials endorsement.

23.3.524 REQUIREMENTS FOR A SCHOOL BUS ENDORSEMENT

(1) Examiners of applicants for a school bus endorsement shall have a commercial driver's license and preferably at least two years' experience driving a school bus in Montana.

(1) through (4) remain the same, but are renumbered (2) through (5).

AUTH: ~~61-5-112,~~ 61-14-202, MCA
IMP: ~~61-1-134,~~ 61-5-102, 61-5-110, 61-5-112, MCA

REASON: The 2023 Montana Legislature adopted Senate Bill 47 which stipulates anyone applying to be a school bus endorsement examiner has the proper experience. The legislation authorized the Department of Justice to adopt rules specifying the examiner has a commercial driver's license and preferably has at least two years' experience driving a school bus.

5. The department proposes to repeal the following rule:

23.3.519 EXCHANGING OR CONVERTING A CHAUFFEUR'S LICENSE TO COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT

AUTH: 61-5-112, 61-5-117, 61-5-125, MCA
IMP: 61-5-102. 61-5-105, 61-5-106, 61-5-107, 61-5-108, 61-5-110, 61-5-111, 61-5-112, 61-5-201, 61-5-209, 61-5-210, MCA

REASON: This rule is outdated because chauffer's licenses have not been issued since 1995.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Laurie Bakri, Department of Justice, Motor Vehicle Division, 302 North Roberts, Scott Hart Building, P.O. Box 201430, Helena, Montana, 59620-1430; telephone (406) 444-3638; fax (406) 444-2086; or e-mail Laurie.Bakri2@mt.gov, and must be received no later than 5:00 p.m., September 1, 2023.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Laurie Bakri at the above address no later than 5:00 p.m., August 18, 2023.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 10 persons based on 875 CDL skills tests given in 2022 (those who are most affected by Entry-Level Driver's Training (ELDT)) and 122 persons in Prohibited status in the past year (those most affected by the Drug and Alcohol Clearinghouse (DACH)) for a total of 997 persons.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and that specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on July 20, 2023.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

The two main components of New Rule I directly impact applicants for a Montana commercial driver license (CDL) and their current or potential employers. Some of those employers would be considered small businesses. Although the rule has a direct bearing upon several individuals and businesses, the actual impact is minimized by existing industry standards and practices.

All operators of commercial motor vehicles had to receive some form of training to obtain a Montana commercial driver license. Typically, that would be provided by a motor carrier, trade school, or private truck driving school. The Entry-Level Driver Training (ELDT) component of the rule formalizes the requirements of that training. In fact, most of those training providers have been approved and are now on the ELDT national training provider registry. In addition, Senate Bill 47 directs the Montana Department of Transportation to implement an ELDT training program and to offer training to the public.

The drug and alcohol clearinghouse (DACH) component of the rule is an enhancement to existing motor carrier drug and alcohol testing requirements. Motor carriers have been testing their drivers under certain conditions since 2001. Employees who have a positive test must be removed from any safety sensitive duties, including operating a commercial motor vehicle. The new rule requires the Motor Vehicle Division of the Montana Department of Justice to query the clearing house for all CDL applicants and to refuse to license anyone with a prohibited status. Since the driver has already been prohibited from operating a commercial motor vehicle by the motor carrier, or future motor carriers, the enhanced rule has no additional impact on the driver.

/s/ DAVID ORTLEY	/s/ AUSTIN KNUDSEN
David Ortley	Austin Knudsen
Deputy Attorney General	Attorney General
Rule Reviewer	Department of Justice

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413 pertaining to renewal dates and requirements	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 25, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rule. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/83660735539
Meeting ID: 836 6073 5539, Passcode: 111511
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 836 6073 5539, Passcode: 111511

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 18, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) ~~Specific procedures and grace periods for renewal are set by department or board rule, or statute applicable to a particular profession, or 37-1-141, MCA. Such procedures shall take account of, and be based upon, the renewal dates in this rule.~~ An existing license ends on the renewal date specified for each profession and occupation listed and must be renewed on or before this date, or the license will lapse, expire, and terminate per 37-1-141, MCA.

(2) If a timely and sufficient application is submitted ~~on or prior to such~~ before the renewal date, the applicant's continued practice is governed under 2-4-631, MCA. ~~In order for an application to be~~ A timely and sufficient ~~it~~ application must be:

(a) completed ~~with truthful information~~;

(b) through (d) remain the same.

(e) submitted by using the online renewal service available on the department's website before 11:59 p.m. Mountain time on the renewal date. ~~Although the department strives to keep its website accessible at all times, licensees should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties~~

~~in accessing the online renewal service do not excuse late renewals;~~

~~(i) online renewal transactions must be fully completed prior to midnight Mountain time on the renewal date.~~

(3) If the requirements of this rule are not met, a late penalty fee as specified in ARM 24.101.403 ~~will be~~ is required ~~in order to renew~~.

~~(4) The provisions of ARM 24.101.408 and 24.101.414 are applicable to all license renewals.~~

(5) remains the same but is renumbered (4).

~~(6)~~(5) The following are renewal dates for the professions and occupations listed:

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(a)	Alternative Health Care	Acupuncturist	Biennially	October 31
		Naturopathic Physician	Annually	April 30
		Naturopathic Physician - Childbirth	Annually	April 30
		Direct-entry Midwife	Annually	April 30
		Direct-entry Midwife Apprentice	Annually	April 30

(b) through (r) remain the same.

(s)	Medical Examiners	~~Acupuncturist~~	~~Biennially~~	~~October 31~~
		Emergency Care Provider: AEMT, EMR, EMT, Paramedic	Biennially	March 31
		Nutritionist	Biennially	October 31
		Physician	Biennially	March 31
		Physician Assistant	Biennially	October 31
		Podiatrist	Biennially	October 31
		Resident Physician	Annually	June 30

(t) through (x) remain the same.

(y)	Pediatric Complex Care	Pediatric Complex Care Assistant	Biennially	March 31
~~(y)~~(z)	Pharmacy	Dangerous Drug Dispenser/Distributor/Manufacturer Endorsement	Annually	November 30

		Out-of-State Mail Order Pharmacy	Annually	November 30
		Pharmacist	Annually	June 30
		Community and Institutional Pharmacy	Annually	November 30
		Pharmacy Technician	Annually	June 30
		Pharmacy Technician Utilization Plan Endorsement	Annually	November 30
		Telepharmacy Endorsement	Annually	November 30
		Veterinary Retail Facility	Annually	November 30
		Wholesale Distributor	Annually	November 30

(z) and (aa) remain the same but are renumbered (aa) and (ab).

~~(ab)~~(ac)	Private Security Patrol Officers and Investigators	~~Contract~~ Private Security Company	Annually	March 1
		Electronic Security Company	Annually	March 1
		~~Proprietary Security Organization~~	~~Annually~~	~~March 1~~
		~~Branch Office~~	~~Annually~~	~~March 1~~
		Private Investigator	Annually	March 1
		Private Investigator Trainee	Annually	March 1
		~~Resident Manager~~	~~Annually~~	~~March 1~~
		~~Qualifying Agent~~	~~Annually~~	~~March 1~~
		Security Guard	Annually	March 1
		Alarm Installer	Annually	March 1
		~~Alarm Response Runner~~	~~Annually~~	~~March 1~~
		Firearms Instructor	Annually	March 1
		Armed Status	Annually	

(ac) remains the same but is renumbered (ad).

(ae)	Property Manager	Property Manager	Annually	October 31

(ad) through (ag) remain the same but are renumbered (af) through(ai).

~~(ah)~~(aj)	Realty Regulation	~~Property Manager~~	~~Annually~~	~~October 31~~
		Real Estate Broker	Annually	October 31
		Real Estate Salesperson	Annually	October 31

		~~Timeshare Salesperson~~	~~Annually~~	~~October 31~~

(ai) and (aj) remain the same but are renumbered (ak) and (al).

~~(ak)~~(am)	Speech-Language Pathologists and Audiologists	Audiologist	Annually	February 1
		Speech-Language Pathologist	Annually	February 1
		Limited (Speech-Language Pathologist)	Nonrenewable	
		~~Active Temporary Speech Pathologist or Audiologist~~ Speech-Language Pathology and Audiology Assistants	~~Nonrenewable Two-year license~~ Annually	February 1

(al) remains the same but is renumbered (an).

~~(am)~~(ao)	Veterinary Medicine	Euthanasia Agency	Annually	May 30
		Embryo Transfer Technician	Annually	November 1
		Euthanasia Technician	Annually	May 30
		Veterinarian	Annually	November 1
		Veterinary Dispensing Technician	Annually	November 1
		Veterinary Technician	Annually	November 1

(7) and (8) remain the same but are renumbered (6) and (7).

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: Sections (1) through (4) are amended to clarify, simplify, and shorten the rule and to eliminate superfluous language.

For acupuncturists, it is necessary to strike renewal requirements from the Board of Medical Examiners and place the renewal requirements in the Alternative Health Care Board, to implement Senate Bill (SB) 453.

House Bill (HB) 449 established licensure for pediatric complex care assistants. This rule seeks to include that license type for renewal.

Changes to the Board of Private Security result from SB 454.

For the Board of Realty Regulation, SB 455 transitioned property managers to a program and out of the board, and eliminated timeshare salesperson licensure.

For speech-language pathology, it is reasonably necessary to strike the obsolete language for active temporary licensure. Following passage of HB 347 in 2017, the board amended several rules and began issuing limited licenses instead of temporary. The department inadvertently missed removing the outdated license verbiage from this rule. Separately, the board is adding the renewal information for speech-language pathology and audiology assistants to implement SB 300.

Veterinary retail facility and veterinary dispensing technician renewals are required for licensing pursuant to SB 561. Licensed veterinary technicians' renewals are required pursuant to 2021 SB 106.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 1, 2023.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ JOHN ELIZANDRO
John Elizandro, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.111.401, 24.111.402, 24.111.403, and 24.111.2301, the amendment and transfer of ARM 24.156.1408, 24.156.1409, and 24.156.1410, the transfer of ARM 24.156.1403 and 24.156.1416, the adoption of New Rules I and II, and the repeal of ARM 24.111.412, 24.111.2105, 24.111.2401, 24.111.2402, and 24.156.1406 pertaining to acupuncturist licensing	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, AMENDMENT AND TRANSFER, TRANSFER, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 25, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/89164043149
Meeting ID: 891 6404 3149, Passcode: 836300
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 891 6404 3149, Passcode: 836300

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 18, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2023 Legislature passed Senate Bill (SB) 453, effectuating a transfer of acupuncturist licensing from the Board of Medical Examiners to the Alternative Health Care Board. These rules propose to transfer the rules applicable to this license type between the boards to accomplish the bill's purpose.

Section 2-4-309, MCA, recognizes that rulemaking may occur prior to the effective date of legislation. In this instance, SB 453 has an effective date of October 1, 2023. To ensure a seamless transition of the acupuncture program from the Board of Medical Examiners to the Alternative Health Care Board, it is necessary

to conduct rulemaking proceedings prior to the effective date of the legislation. This creates the rather unusual circumstance of board-created rulemaking to effectuate a transfer and amendment of rules which are not yet under the jurisdiction of the board amending them. In light of 2-4-309, MCA, this is a permissible use of board authority. The board is considering rules which will fall under its jurisdiction as of the effective date of the legislation. As a result, no rule proposed to be amended and transferred by this notice will have an effective date prior to October 1, 2023.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.111.401 FEES (1) Fees are payable to the Alternative Health Care Board ~~of Alternative Health Care~~ and are nonrefundable.

(2) ~~The fees are as follows~~ Fees for naturopaths are:

(a) ~~naturopath~~ license application	$300
(b) ~~naturopath~~ original license	200
(c) ~~naturopath~~ license renewal	~~550~~ 240
(d) ~~naturopath~~ specialty certificate	100
(e) ~~naturopath~~ specialty certificate renewal	25

(3) Fees for midwives are:

~~(f)~~(a) ~~midwife~~ license application	300
~~(g)~~(b) ~~midwife~~ original license	200
~~(h)~~(c) ~~midwife~~ license renewal	~~550~~ 240
~~(i)~~(d) ~~midwife~~ apprentice license application	200
~~(j)~~(e) ~~midwife~~ apprentice license renewal	~~200~~ 100

(4) Fees for acupuncturists are:

(a) license application	125
(b) license renewal	100

~~(3)~~(5) Inactive status fees are as follows:

(a) naturopath	~~275~~ 120
(b) midwife	~~275~~ 120
(c) midwife apprentice	~~100~~ 50

~~(4) The midwife examination fee is set by the examination administrator and is paid by the applicant directly to the examination administrator.~~

(5) remains the same but is renumbered (6).

AUTH: 37-1-134, 37-13-201, 37-26-201, 37-27-105, MCA
IMP: 37-1-134, 37-1-141, 37-13-302, 37-26-201, 37-26-403, 37-27-203, 37-27-205, 37-27-210, MCA

REASON: Reasonable necessity exists to amend this rule to include fees for acupuncturists. Reasonable necessity exists to strike (4) because it is unnecessary to be stated in rule and is not a fee payable to the board. Other changes to the rule are simply for ease of readability. Authorization and implementation statutes additionally require updating. Finally, the fees across license types are proposed to be amended to balance budgetary requirements of the board as measured against

expected expenditures. The specific licensee impacts are below, and further information is available from the board on request.

License Type	Licensee #	Old Renewal Fee	Proposed Renewal Fee	Difference/Annual Savings	Aggregate Licensee Expense Savings
Active Midwife	39	550	240	-310	-12090
Inactive Midwife	1	275	120	-155	-155
Midwife Apprentice	12	200	100	-100	-1200
Inactive Midwife Apprentice	0	100	50	-50	0
Naturopath	153	550	240	-310	-47430
Inactive Naturopath	4	275	120	-155	-620
Acupuncturist	198	75	100	25	4950
Total	407				-56545

24.111.402 MANAGEMENT OF INFECTIOUS WASTE (1) Each ~~naturopathic physician, direct-entry midwife, and direct-entry midwife apprentice~~ licensee licensed by the board shall store, transport off the premises, treat, and dispose of infectious waste, as defined in 75-10-1003, MCA, in accordance with the requirements of Title 75, chapter 10, part 10, MCA, and rules adopted by the Department of Environmental Quality pursuant thereto.

AUTH: 37-13-201, 37-26-201, 37-27-105, 75-10-1006, MCA
IMP: 75-10-1006, MCA

REASON: See general statement of reasonable necessity.

24.111.403 FEE ABATEMENT (1) The Alternative Health Care Board ~~of Alternative Health Care~~ adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-101, 37-13-201, 37-26-201, 37-27-105, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: See general statement of reasonable necessity.

24.111.2301 UNPROFESSIONAL CONDUCT (1) ~~The board defines unprofessional conduct for naturopathy and midwifery as follows~~ It is unprofessional conduct for a licensee or applicant to violate any statute, rule, or standard of care

governing their scope of practice. In addition, the following is unprofessional conduct:

~~(a) Violation of any state or federal statute or administrative rule regulating the practice of naturopathy or midwifery;~~

~~(b) Incompetence, negligence, or use of any procedure in the practice of naturopathy or midwifery which creates an unreasonable risk of physical harm or serious financial loss to the patient;~~

~~(c)~~(a) failing to cooperate with an investigation of the board by failing to respond in full or in part; ~~authorized by the Board of Alternative Health Care by:~~

~~(i) not furnishing any papers or documents in the possession of and under the control of the license holder;~~

~~(ii) not furnishing in writing a full and complete explanation covering the matter contained in the complaint; or~~

~~(iii) not responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the accused in the proceedings.~~

~~(d) Practice beyond the scope of practice encompassed by the license;~~

~~(e) Failing to maintain appropriate records as specified in statute or in the rules of the board;~~

~~(f)~~(b) failing to adequately supervise auxiliary staff to the extent that the patient's physical health or safety is at risk;

~~(g)~~(c) practicing ~~naturopathy or midwifery~~ while the license is suspended, revoked, or expired;

(h) and (i) remain the same but are renumbered (d) and (e).

~~(j)~~(f) intentionally or negligently causing physical or emotional injury or abuse to a client or patient~~, or sexual contact with a client or patient~~ in a clinical setting, or sexual abuse, sexual misconduct, or sexual exploitation by the licensee, whether or not related to the licensee's practice;

~~(k)~~(g) operating under unsanitary conditions after a warning from the board or consistently maintaining an unsanitary office;

~~(l) Failure to file reports required in the board's statutes or rules;~~

~~(m)~~(h) failure by a midwife to maintain current and valid certifications in adult and infant cardiopulmonary resuscitation and neonatal resuscitation as provided by 37-27-201, MCA.

AUTH: 37-1-131, 37-1-319, 37-13-201, 37-26-201, 37-27-105, MCA
IMP: 37-1-141, 37-1-316, 37-1-319, 37-13-201, 37-26-201, 37-27-105, MCA

REASON: Reasonable necessity exists to strike (1)(a) because its substance has been moved to the introductory clause. Subsection (1)(b) is proposed to be stricken because it is duplicative of 37-1-316(18), MCA. Portions of (1)(c) are proposed to be stricken in favor of brevity. Subsections (1)(d) and (e) are proposed to be stricken because they are included in the introductory clause of the rule. Subsection (1)(g) is proposed to be amended to make it applicable to all license types of the board. Subsection (1)(j) is proposed to be amended to specify and clarify that sexual misconduct, whether or not within the scope of practice, may be grounds for disciplinary action. Subsection (1)(l) is proposed to be stricken because it is

included in the introductory clause of the rule. Reasonable necessity exists to amend the authorizing and implementing citations to include acupuncture.

5. The following rules are proposed to be amended and transferred, new matter underlined, deleted matter interlined, with proposed rule numbers in parentheses. As set forth in the general statement of reasonable necessity, these rules will fall under the jurisdiction of the board as of October 1, 2023. These amendments, if adopted as proposed, may not be effective until that date.

24.156.1408 (24.111.815) CONTINUING EDUCATION FOR ACUPUNCTURISTS (1) Each acupuncture licensee ~~of the Board of Medical Examiners~~ shall earn 30 clock hours of accredited continuing acupuncture education during each two-year licensing period. Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) through (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-306, 37-13-201, MCA

REASON: Reasonable necessity exists to amend this rule to remove reference to the Board of Medical Examiners.

24.156.1409 (24.111.817) ACCREDITATION, APPROVAL, AND STANDARDS ~~(1) The board shall appoint a continuing education review committee which shall assist the board in approving courses, papers, workshops, and other activities designed to meet the continuing education requirements of licensed acupuncturists.~~

~~(2) The continuing education review committee shall approve continuing acupuncture education courses, papers, workshops, and other activities that meet the following standards:~~

(1) Continuing education programs must:

(a) ~~They shall~~ have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as an acupuncturist~~.~~; and

(b) ~~They shall~~ constitute an organized program of learning dealing with matters directly related to the practice of acupuncture, professional responsibility, or ethical obligations of acupuncturists.

~~(c) Providers of continuing acupuncture education and authors of published papers shall apply to the board for course or publication approval by submitting an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate documents.~~

~~(d) Applicants shall demonstrate that the offered course complies with the standards.~~

~~(e) The board, in its discretion, may determine the number of hours acceptable for any continuing education credit.~~

(2) Approved continuing education includes:

~~(f)~~(a) courses accredited by the National Commission for the Certification of Acupuncture and Oriental Medicine ~~shall be preapproved by the board.~~;

~~(g)~~(b) courses sponsored by a state acupuncture association or an acupuncture school ~~shall be preapproved by the board.~~; and

~~(h)~~(c) teaching acupuncture in an accredited academic or continuing education program ~~shall be accepted as continuing education~~.

(3) Licensees may claim five hours of self-study toward meeting the requirements of ARM ~~24.156.1408~~ 24.111.815.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-306, 37-13-201, MCA

REASON: Reasonable necessity exists to amend this rule to specify the types of continuing education which are approved. The continuing education committee has not convened in at least four years and has proved no longer necessary.

24.156.1410 (24.111.819) AUDIT AND CE REPORTING REQUIREMENTS

~~(1) Each licensee shall affirm an understanding of their recurring duty to comply with CE requirements as a part of license renewal.~~

~~(2) The department may randomly audit up to 50 percent of renewed licensees.~~

(1) The department is authorized to audit CE requirements and shall determine the percentage to audit based on a statistically relevant sampling of the total number of licensees and the compliance rate of past audits.

(3) remains the same but is renumbered (2).

~~(4) Licensees found to be in noncompliance with CE requirements may be subject to administrative suspension. Licensees may not apply CE hours used to complete delinquent CE requirements for the next reporting period.~~

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-1-321, 37-13-201, MCA

REASON: Section (1) is proposed to be stricken because it is unnecessary to specify in rule the specifics of the license application or renewal. Section (2) is proposed to be replaced because the current language is duplicative of statute, which caps audits at 50% of licensees. This authorization will permit the department to determine appropriate audit numbers, to be reported to the board, for compliance purposes. Section (4) is proposed to be stricken because its substance is included for all licensees of the board in New Rule I.

6. The following rules are proposed to be transferred, without amendment, proposed numbers in parentheses. As set forth in the general statement of reasonable necessity, these rules will fall within the jurisdiction of the board on October 1, 2023. Transfer is not proposed to be effective until that date:

24.156.1403 (24.111.801) REQUIREMENTS FOR LICENSURE

AUTH: 37-13-201, MCA
IMP: 37-13-201, MCA

REASON: See general statement of reasonable necessity.

24.156.1416 (24.111.807) POINT INJECTION EDUCATION AND TRAINING

AUTH: 37-13-201, MCA
IMP: 37-13-103, 37-13-302, MCA

REASON: See general statement of reasonable necessity.

7. The proposed new rules are as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

NEW RULE II APPLICATION FOR LICENSURE (1) Each application for licensure from the board must include:

(a) a completed application form;

(b) the initial license fee; and

(c) verification of applicable educational requirements.

(2) An applicant licensed in any other jurisdiction at any time shall cause the other jurisdictions to submit a current verification of licensure directly to the board.

(3) An applicant may voluntarily withdraw their application by written request if the application has not appeared on a board agenda. Application fees are not refundable.

AUTH: 37-13-201, MCA
IMP: 37-13-302, MCA

REASON: Reasonable necessity exists to adopt this new rule to specify the general requirements for license application.

8. The rules proposed to be repealed are as follows:

24.111.412 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.111.2105 LICENSE RENEWAL FOR ACTIVATED MILITARY RESERVISTS

AUTH: 37-26-201, 37-27-105, MCA
IMP: 37-1-138, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of statutory requirements set forth in 37-1-138, MCA.

24.111.2401 COMPLAINT PROCEDURE

AUTH: 37-26-201, 37-27-105, MCA
IMP: 37-1-308, 37-1-309, MCA

REASON: Reasonable necessity exists to repeal this rule because it sets forth a departmental procedure which is defined by statute and need not be set forth in rule.

24.111.2402 SCREENING PANEL

AUTH: 37-26-201, 37-27-105, MCA
IMP: 37-1-307, MCA

REASON: Reasonable necessity exists to repeal this rule because it sets forth board practice which need not be in rule.

24.156.1406 CURRICULUM

AUTH: 37-13-201, MCA
IMP: 37-13-301, 37-13-302, 37-13-304, MCA

REASON: Reasonable necessity exists to repeal this rule because it provides no substantive information beyond what is set forth in statute at 37-13-302, MCA.

9. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 1, 2023.

10. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

11. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

12. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 25 by electronic mail and July 24 by telephone.

13. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes to ARM 24.111.401 proposed in this notice will have a significant and direct positive impact upon small businesses by reducing licensing fees. The agency further determined that the remaining rules will not significantly or directly impact small businesses.

14. Department staff has been designated to preside over and conduct this hearing.

ALTERNATIVE HEALTH CARE BOARD
ALISUN BONVILLE, ND,
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ JOHN ELIZANDRO
John Elizandro, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.159.301, 24.159.915, and 24.159.916, the adoption of New Rules I and II, and the repeal of ARM 24.159.404, 24.159.407, 24.159.408, 24.159.409, 24.159.502, 24.159.901, 24.159.911, and 24.159.912, pertaining to the Board of Nursing	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 30, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/88297061688
Meeting ID: 882 9706 1688, Passcode: 588404
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 882 9706 1688, Passcode: 588404

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 23, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.159.301 DEFINITIONS (1) and (2) remain the same.

(3) "Allowable routes" means oral, sublingual, topical, ophthalmic, otic, nasal, and inhalant methods of administration, except as otherwise provided by rule.

(3) remains the same but is renumbered (4).

~~(4) "Board" means the Montana Board of Nursing.~~

(5) through (12) remain the same.

~~(13) "Department" means the Montana Department of Labor and Industry as provided for in Title 2, chapter 15, part 17, MCA.~~

(14) through (47) remain the same but are renumbered (13) through (46).

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, 37-8-424, MCA

REASON: Reasonable necessity exists to include the definition of "allowable routes" due to the proposed repeal of ARM 24.159.901, which is otherwise unnecessary. For this reason also, the implementation statutes must be amended to include reference to Medication Aide II. Reasonable necessity exists to strike the definitions of "board" and "department" because the terms are statutory and need not be restated in rule.

24.159.915 STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE I (1) remains the same.

(2) "General supervision" for purposes of this rule means at least quarterly onsite review by a supervising nurse of a medication aide I's medication administration skills, and the guidance of a supervising nurse to include a written plan addressing questions and situations that may arise when the supervising nurse is not available. Such a plan must include access to a health care professional.

AUTH: 37-1-131, 37-8-202, MCA
IMP: 37-8-202, 37-8-422, MCA

REASON: Reasonable necessity exists to include the definition of "general supervision" in this rule because the unique definition is only needed for this rule and is taken from ARM 24.159.901, which is proposed to be repealed.

24.159.916 STANDARDS RELATED TO THE RESPONSIBILITIES OF A MEDICATION AIDE II (1) and (2) remain the same.

(3) "Supervision" for purposes of this rule means a provision of general supervision by a professional or practical nurse who is on the premises for the accomplishment of medication administration.

AUTH: 37-8-426, MCA
IMP: 37-8-424, MCA

REASON: Reasonable necessity exists to include the definition of supervision in this rule because the unique definition is only needed for this rule and is taken from ARM 24.159.901, which is proposed to be repealed.

4. The proposed new rules are as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under federal law and regulations implementing the Healthcare Practitioner Databank or the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

NEW RULE II CIRCUMSTANCES CONSTITUTING A LOW RISK OF ADVERSE HOMEBIRTH OUTCOMES (1) A low risk of adverse birth outcomes indicates a clinical scenario for which there is not clear demonstratable benefit for a medical intervention or transfer to a physician's care.

(2) Consultation with a physician does not preclude a low risk of adverse birth outcomes.

(3) Preexisting arrangements for emergency transportation to a nearby hospital if needed do not preclude a low risk of adverse birth outcomes.

(4) The following conditions preclude a low risk of adverse birth outcomes.

(a) Pre-existing conditions (not gynecological):

(i) subarachnoid hemorrhage, aneurysm;

(ii) recent or acute herniated nucleus pulposus;

(iii) active tuberculosis or ongoing treatment;

(iv) human immunodeficiency virus, acquired immunodeficiency syndrome, hepatitis B or hepatitis C;

(v) heart defect with hemodynamic consequences;

(vi) clotting disorders;

(vii) kidney dysfunction;

(viii) hypertension;

(ix) diabetes mellitus;

(x) unmedicated thyroid disorders with present TSH receptor antibodies;

(xi) inflammatory bowel disease, including ulcerative colitis and Crohn's disease;

(xii) systemic and rare disorders, including Addison's disease, Cushing's syndrome, systemic lupus erythematosus, antiphospholipid syndrome, scleroderma, rheumatoid arthritis, polyarteritis nodosa, Raynaud's disease, and Marfan syndrome;

(xiii) illegal drug use; or

(xiv) alcoholism.

(b) Pre-existing gynecological conditions:

(i) pelvic floor reconstruction;
(ii) conization;
(iii) myomectomy or other uterine surgery; or
(iv) uterine distortion, including bicornuate, septate, unicornuate, or didelphic conditions.
(c) Obstetric history:
(i) blood group antagonism, including Rhesus, Kell, Duffy, and Kidd glycoproteins;
(ii) previous pre-term (before 34 weeks) birth. If a normal pregnancy occurred after the premature birth, the current birth may be considered to be low risk;
(iii) cervical insufficiency or cerclage;
(iv) placental abruption;
(v) caesarean section - must transfer current pregnancy at 37 weeks if no reason for transfer prior;
(vi) dysmaturity;
(vii) uncontrolled post-partum hemorrhage;
(viii) manual placental removal;
(ix) placenta accreta; and
(x) total uterine rupture with no functional recovery; or
(xi) history of intrauterine fetal demise.
(d) Occurring or diagnosed during pregnancy:
(i) rubella;
(ii) cytomegalovirus;
(iii) genital herpes (primo infection);
(iv) parvovirus;
(v) tuberculosis;
(vi) human immunodeficiency virus or acquired immunodeficiency syndrome;
(vii) syphilis;
(viii) illegal drug use;
(ix) alcoholism;
(x) maternal anemia;
(xi) extrauterine pregnancy;
(xii) amniotic fluid loss or preterm labor before 37 weeks;
(xiii) uncontrolled diabetes mellitus;
(xiv) gestational diabetes mellitus;
(xv) gestational hypertension with diastolic blood pressure above 100 or systolic blood pressure above 160;
(xvi) preeclampsia, superimposed preeclampsia, hemolysis, or elevated liver enzymes and low platelets (HELLP) syndrome;
(xvii) blood group antagonism;
(xviii) deep vein thrombosis;
(xix) clotting disorders;
(xx) vasa previa;
(xxi) velamentous cord insertion;
(xxii) placenta previa;
(xxiii) placental abruption;

(xxiv) serotonin syndrome;
(xxv) cervical insufficiency prior to 37 weeks of gestation;
(xxvi) multiple pregnancy;
(xxvii) breech or abnormal position at term; or
(xxviii) fetal mortality; or
(xxix) prolonged gestation > 42 weeks.

AUTH: 37-1-131, MCA
IMP: 37-8-202, MCA

REASON: The 2023 Legislature enacted House Bill (HB) 655, requiring Medicaid coverage of midwife-attended home births (effective 7/1/2023). Accordingly, the Board of Nursing determined it is reasonably necessary to outline circumstances constituting a low risk for adverse outcomes for a planned homebirth.

5. The rules proposed to be repealed are as follows:

24.159.404 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to HB 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

24.159.407 MEETINGS OF THE BOARD

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: Reasonable necessity exists to repeal the rule because it sets forth requirements which need not be set out in rule. Meetings, approval of the schedule, and special meetings need not be in rule, and duplicate the requirements of statute.

24.159.408 OFFICERS OF THE BOARD

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of requirements set forth in HB 87, Section 2 (2023).

24.159.409 DUTIES OF THE PRESIDENT OF THE BOARD

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: Reasonable necessity exists to repeal this rule because it sets forth business process of the board which need not be in rule.

24.159.502 NURSE LICENSURE COMPACT RULES

AUTH: 37-8-202, MCA
IMP: 37-8-501, MCA

REASON: Reasonable necessity exists to repeal this rule because it does not provide any substance.

24.159.901 DEFINITIONS

AUTH: 37-8-202, 37-8-426, MCA
IMP: 37-8-202, 37-8-423, MCA

REASON: Reasonable necessity exists to repeal this rule as unnecessary based on changes proposed in this rulemaking. The definition of "allowable routes" is proposed to be included in ARM 24.159.301. The definition of "general supervision," applicable to Medication Aide I, is proposed to be included in ARM 24.159.915 so that all standards related to that license type are collocated. The definition of "Medication Aide I" is duplicative of requirements set forth in ARM 24.159.915. The sole unique section was the age requirement for Medication Aide I. This requirement is proposed to be repealed as unnecessary for licensure. This is in keeping with other board license types. Section (4) is duplicative of 37-8-423, MCA. The definition of "supervision," applicable to Medication Aide II, is proposed to be included in ARM 24.159.916 so that all requirements for that license type are collocated.

24.159.911 GENERAL REQUIREMENTS FOR LICENSURE AS MEDICATION AIDE II

AUTH: 37-8-426, MCA
IMP: 37-8-423, 37-8-426, MCA

REASON: Reasonable necessity exists to repeal this rule because it merely restates the statutory requirements for licensure set forth in 37-8-423, MCA. Rules are not permitted to duplicate statute. Subsection (1)(h) recognizes substantial equivalency, which is also statutory. *See* 37-1-304, MCA.

24.159.912 CONTINUING EDUCATION REQUIREMENTS FOR MEDICATION AIDE II

AUTH: 37-8-426, MCA

IMP: 37-8-423, 37-8-426, MCA

REASON: Reasonable necessity exists to repeal this rule because the board has proposed moving away from audit requirements for continuing education. HB 154 clarifies and specifies the obligations of medication aide II licensees with regard to continuing education. It need not be restated in rule.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 1, 2023.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on May 25, 2023, by electronic mail.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF NURSING
SARAH SPANGLER, RN,
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ JOHN ELIZANDRO
John Elizandro, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.207.401 and 24.207.502, the adoption of NEW RULE I, and the repeal of ARM 24.207.408 pertaining to fees and the practical application of real estate appraisal	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On August 30, 2023, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/84334074601
Meeting ID: 843 3407 4601, Passcode: 201865
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 843 3407 4601, Passcode: 201865

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on August 23, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.207.401 FEES (1) The following fees shall apply to all licensed and certified real estate appraisers, trainees, and applicants. Fees are not refundable or transferable. Fees are not prorated for portions of the year.

(a) original license application by examination	~~$475~~ 238
(b) temporary practice permits for out-of-state licensed or certified appraisers	~~250~~ 125
(c) course approval per course payable by course provider	~~300~~ 150
(d) course renewal approval per course	~~300~~ 150
(e) upgrade fee	~~300~~ 150
(f) remains the same.	
(g) inactive renewal license fee ~~(50 percent of active renewal)~~	~~225~~ 125
(h) reciprocal license application	~~475~~ 238
(i) license or certification renewal fee	~~450~~ 225

(j) original trainee license ~~400~~ 200
(k) trainee renewal fee ~~400~~ 200
(l) mentor endorsement application fee ~~200~~ 100
(m) reactivation fee (inactive to active status) ~~225~~ 113

(2) The following fees apply to registered appraisal management companies and applicants for registration. Fees are not refundable or transferable. Fees are not prorated for portions of the year.

(a) original application and license fee ~~2000~~ 1000
(b) application for change of controlling person or contact person ~~250~~ 125
(c) renewal fee for appraisal management company ~~1000~~ 500
(d) remains the same.
(e) application to change business structure with addition or substitution of an owner ~~250~~ 125
(f) application to change business structure without addition or substitution of an owner ~~45~~ 23
(g) through (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-212, 37-54-302, 37-54-310, MCA

REASON: As part of the administrative services the department provides to boards, fiscal staff informed the board that its cash balance is exceeding two times its appropriation, as prohibited by 17-2-302, MCA. The board requested the department conduct a fee structure analysis and provide fee reduction proposals for it to consider eliminating the excess cash. The board has determined it is reasonably necessary to amend this rule and reduce fees to reduce its cash balance and meet statutory requirements while ensuring adequate revenue to support board activities through the next biennium.

For the renewal cycle beginning August 31, 2023, all renewal fees will be abated by 100%. Moving forward, the board is reducing renewal fees by 50%, starting in 2024. Additionally, the board is reducing application fees for each license type and other administrative fees by 50%. The board estimates the decrease in renewal fees will affect approximately 602 licensees:

Appraisal Management Companies: 84 Active
Licensed Appraisers: 48 Active, 2 Inactive
Certified Residential Appraisers: 195 Active, 3 Inactive
Certified General Appraisers: 231 Active, 1 Inactive
Trainee Appraiser: 38 Active

These changes will reduce annual revenue by approximately $310,663 by June 30, 2024. Beginning in fiscal year 2025, the reduced renewal and application fees will further decrease the board's overall cash balance by approximately $351,754 over five years, leaving the board with $798,810 in ending cash for fiscal year 2030. When weighed against expected expenses, this reduction will place the board in a more stable position to consistently maintain one year's worth of cash on hand. The department will continue to monitor the board's cash reserves in a fiscally prudent manner while maintaining the current level of operations.

24.207.502 APPLICATION REQUIREMENTS (1) through (2)(b) remain the same.

(c) proof of experience by:

(i) an experience log on a form provided by the department~~.~~; or

(ii) proof of completion of the Practical Applications of Real Estate Appraisal (PAREA) program at the experience credit levels approved by the AQB in each AQB-approved program.

(3) through (9) remain the same.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, 37-54-105, 37-54-202, MCA

REASON: Reasonable necessity exists to amend (2) to provide for an alternative path to licensure utilizing the PAREA program, which has been recognized by AQB. The board believes this additional path to licensure will benefit Montanans by allowing more qualified licensees to practice in the state.

4. The proposed new rule is as follows:

NEW RULE I ADMINISTRATIVE SUSPENSION (1) The board authorizes the department to:

(a) administratively suspend licenses for deficiencies set forth in 37-1-321(1)(a) though (e), MCA; or

(b) file a complaint pertaining to the deficiencies in (1) that are based on repeated or egregious conduct, or that have co-occurring misconduct allegations that directly implicate public safety and may warrant formal disciplinary action.

(2) An administrative suspension is not a negative, adverse, or disciplinary action under Title 37, MCA, and is not reportable under the department's licensee lookup and license verification databank.

AUTH: 37-1-131, MCA
IMP: 37-1-321, MCA

REASON: Section 37-1-321, MCA, permits the board to authorize the department to take certain non-disciplinary actions regarding licensees who are out of compliance with administrative licensure requirements such as not meeting continuing education requirements, failing to respond to continuing education audits, not paying required fees, not meeting initial licensing requirements, and noncompliance with board final orders. The board authorized the department to take these actions previously by motion. Reasonable necessity exists to adopt this rule to formally, publicly, and accessibly reiterate that authorization, so the public and licensees are aware of the authorization.

5. The rule proposed to be repealed is as follows:

24.207.408 MILITARY TRAINING OR EXPERIENCE

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: Reasonable necessity exists to repeal this rule, effective October 1, 2023, at the earliest, due to House Bill 583 (2023). That legislation amends 37-1-145, MCA, and eliminates the requirement for adoption by the board of a specific military training rule, setting forth specific obligations for the board to accept military experience for granting licensure. As such, the need for this rule is obsolete.

6. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., September 1, 2023.

7. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and at sosmt.gov/ARM/register.

8. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

11. Department staff has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS
GREGORY THORNQUIST, CERTIFIED GENERAL APPRAISER, PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ JOHN ELIZANDRO
John Elizandro, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.25.1102 pertaining to navigable waterways	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 7, 2023, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Montana Room, First Floor, located at 1539 Eleventh Avenue, Helena, Montana, and via Zoom, to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting: https://mt-gov.zoom.us/j/84336639597?pwd=VHo1Wk9rUmRKME5vM1VRMUpad0dUdz09; Meeting ID: 843 3663 9597; Password: 416356

b. Dial by Telephone: +1 646 558 8656; Meeting ID: 843 3663 9597; Password: 416356; Find your local number: https://mt-gov.zoom.us/u/kdHocTaR5x

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact the department no later than 5:00 p.m. on August 28, 2023, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, Montana 59620-1601, 406-444-6615, or e-mail DNRCOAH@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

36.25.1102 PURPOSE AND APPLICABILITY (1) and (2) remain the same.

(3) The department may, upon request by an applicant, issue an easement~~,~~ or lease~~, or license~~ for the board's approval of the use of a riverbed which is not yet adjudicated as navigable.

(a) Any such easement~~,~~ or lease, ~~or license,~~ which is voluntarily sought by an applicant, shall only convey a contingent right to use the riverbed based upon the validity and extent of the board's title to the riverbed.

(b) The department may issue such contingent-right easements~~,~~ and leases, ~~and licenses~~ only where the department has historical documentation that the river was susceptible of use in commerce at statehood.

(c) remains the same.

(4) The department may, upon request by an applicant, issue a license for the use of a riverbed which is not yet adjudicated as navigable.

(a) Any such license, which is voluntarily sought by an applicant, shall only convey a contingent right to use the riverbed based upon the validity and extent of the board's title to the riverbed.

(b) The department may issue such contingent-right licenses only where the department has historical documentation that the river was susceptible of use in commerce at statehood.

(4) remains the same but is renumbered (5).

AUTH: 77-1-1109, 77-1-1117, MCA
IMP: 77-1-1109, MCA

REASON: Currently, Unit Office staff have the authority to approve Land Use Licenses (LULs) for other uses outside of navigable waterways. LULs for navigable waterways are mostly used for erosion control, flood impact reduction, and general irrigation systems maintenance. Due to the timeliness of these LULs, the added step of acquiring Land Board approval costs the landowner critical waiting time for these activities. These LULs are typically for less than one acre and generate very little revenue for the trust. For these reasons, a rule amendment would allow for more efficient use of staff time and better ability to respond rapidly to flood and other impacts.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, Montana 59620-1601, or e-mail at DNRCOAH@mt.gov, and must be received no later than 5:00 p.m. on September 7, 2023.

5. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

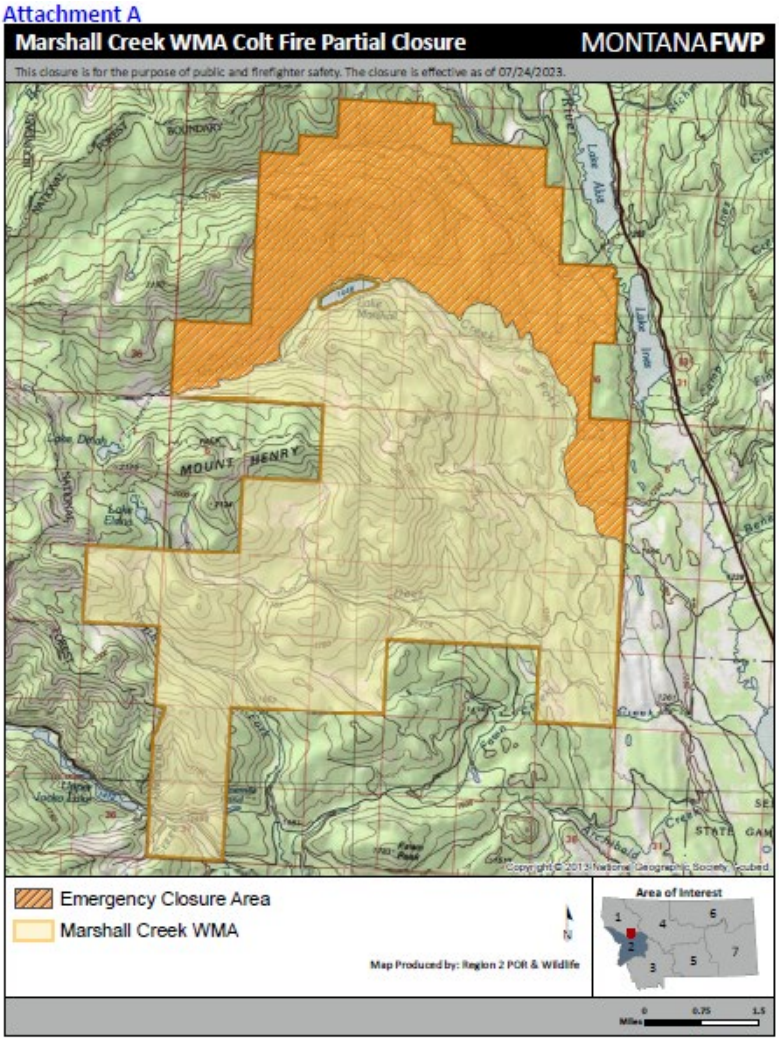
In the matter of the adoption of an emergency rule partially closing the Marshall Creek Wildlife Management Area in Missoula County	))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) The Colt Lake fire has grown extensively over the past 48 hours and has reached the northern edge of the Marshall Creek Wildlife Management Area (WMA). On July 24, 2023, the department received a request from fire incident command to close the north end of the WMA, as shown on Attachment A. The fire is expected to continue to grow and could move further south.

Attachment A


Marshall Creek WMA Colt Fire Partial Closure
MONTANAFWP
This closure is for the purpose of public and firefighter safety. The closure is effective as of 07/24/2023.
MOUNT HENRY
Emergency Closure Area
Marshall Creek WMA
Map Produced by: Region 2 POR & Wildlife
Area of Interest

(b) In order to protect the public from any injuries resulting from the Colt Lake fire, a portion of the Marshall Creek WMA is closed.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the partial closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 15 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on August 18, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rule is effective July 25, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I PARTIAL CLOSURE OF THE MARSHALL CREEK WILDLIFE MANAGEMENT AREA (1) The Marshall Creek Wildlife Management Area is located in Missoula County.

(2) The Marshall Creek Wildlife Management Area is partially closed.

(3) This rule will expire as soon as the department determines the fire conditions improve and no longer present a risk to public health and safety. This will depend on weather conditions and the extent of the fire damage. Signs partially closing the Marshall Creek Wildlife Management Area will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than September 1, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that

includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on July 25, 2023.

/s/ Dustin Temple
Dustin Temple
Director
Department of Fish, Wildlife and Parks

/s/ Kevin Rechkoff
Kevin Rechkoff
Rule Reviewer

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.20.202, 17.20.203, 17.20.204, 17.20.205, 17.20.206, 17.20.301, 17.20.303, 17.20.605, 17.20.802, 17.20.803, 17.20.806, 17.20.807, 17.20.901, 17.20.1301, 17.20.1302, 17.20.1418, 17.20.1426, 17.20.1501, 17.20.1502, 17.20.1503, 17.20.1509, 17.20.1510, 17.20.1511, 17.20.1605, 17.20.1801, and 17.20.1902, and the repeal of ARM 17.4.501 and 17.4.502, and the amendment to Circular MFSA-2 pertaining to modernizing application and notice requirements, allowing for electronic-only submittal and use of modern mapping technologies, eliminating requirements related to temporary construction camps, and general housekeeping updates	)	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 28, 2023, the Department of Environmental Quality published MAR Notice No. 17-429 pertaining to the proposed amendment and repeal of the above-stated rules at page 373 of the 2023 Montana Administrative Register, Issue Number 8.

2. The department has amended and repealed the above-stated rules as proposed.

3. The department received one comment. A summary of the comment and the department's response are as follows:

COMMENT #1: The commenter brought up concerns that within several places in the amended rules, the department has inserted language in regards to applications that applications would need to be submitted "in a format acceptable to the department." The commenter expressed concern based on experience developing an application in a different state and wanted more direction on what the department would consider an acceptable format.

RESPONSE #1: The comment seems to address the content of an application, including the structure and organization of the information included. The referenced rule amendment is not intended to address the content but rather the format, such

as electronic or paper or file type, of the application. However, the department appreciates the comment and agrees that it is in the best interests of everyone involved to provide as much regulatory certainty as possible in administrative rules. It is also best practice to limit the frequency of rule amendments and to provide flexibility where possible and where it does not interfere with the purpose or protectiveness of the regulation.

In this situation, the department's intent with the proposed new language is to increase, not limit, flexibility in order to allow for a variety of application formats, recognizing that technology is advancing at a rapid speed and what works for an applicant this year may no longer be an appropriate format in five years.

Experience suggests that on any project proposed under the Montana Major Facility Siting Act, there will be a certain level of consultation between the applicant and the department regarding application requirements and materials prior to submittal of the application. The department encourages and appreciates this consultation and will work with applicants throughout this process to identify a format that is convenient and accessible for all parties, including the public. At this time, the department will not be making additional rule changes as a result of this comment.

/s/ *Nicholas Whitaker*
NICHOLAS WHITAKER
Rule Reviewer

/s/ *Christopher Dorrington*
CHRISTOPHER DORRINGTON
Director
Department of Environmental Quality

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.3.140, 23.3.147, and 23.3.507 and the repeal of ARM 23.3.101 and 23.3.135 pertaining to driver licensing and licensing operators of commercial motor vehicles	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 9, 2023, the Department of Justice published MAR Notice No. 23-3-272 pertaining to the proposed amendment and repeal of the above-stated rules at page 506 of the 2023 Montana Administrative Register, Issue Number 11.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.12.102 and 24.12.107 and the repeal of ARM 24.12.101, 24.12.103, 24.12.104, 24.12.105, 24.12.106, 24.12.108, 24.12.109, and 24.12.110 pertaining to the displaced homemaker program	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 23, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-12-405 regarding the public hearing on the proposed changes to the above-stated rules, at page 537 of the 2023 Montana Administrative Register, Issue No. 12.

2. On July 13, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: A commenter expressed concern that, by striking "Displaced Homemaker Program" from the catchphrase of the administrative rules, the displaced homemaker program would "lose identity."

RESPONSE 1: The department disagrees. Rule catchphrases exist to assist rule users in finding a rule which applies to their situation. Utilizing the full program name in every rule simply makes the rules more difficult to use. While it was once a common practice in rulemaking, the practice has become archaic and unnecessary. Perhaps more importantly, it must be noted that the rule subchapter (ARM 24.12.1) is titled "Displaced Homemaker Program."

COMMENT 2: Commenters expressed concern that this rulemaking was an effort to eliminate the displaced homemaker program, that program funding might be in jeopardy, or that the department may not seek requests for proposal (RFPs) in the future.

RESPONSE 2: This comment is outside the scope of the rulemaking. However, the displaced homemaker program is a creature of federal and state law. Administrative rules exist to explain ambiguities in law and cannot effectuate repeal or elimination of those laws. The department has no plans to eliminate, or seek elimination of, the program. With regard to RFPs in the future, the department has no current plans to change its grant application process. As with all programs, the department

continues to review and assess to determine the best means of carrying out the program into the future; these rules do not effectuate a change in that regard.

COMMENT 3: A commenter questioned why the pediatric complex care assistant program was specified in rule, and whether that might be interpreted to prohibit any other type of program from utilizing the program.

RESPONSE 3: Pediatric complex care is a new licensure program established by the 2023 legislature with House Bill 449. Specificity of including the program makes clear to users that the program is a permissible use of state law displaced homemaker funding. Including the license type after the disjunctive "or" clarifies that the program is not the only suitable source of funding, but one of a variety which falls under the categories specified in law.

COMMENT 4: A commenter questioned whether striking the definition of "employability development plan" was intended to restrict the program.

RESPONSE 4: As set forth in the statement of reasonable necessity, that definition is stricken because the term was only used once throughout the administrative rules. The substance of the definition–including the same words of the definition–was incorporated into ARM 24.12.107. In short, the definition is used in place of defining a term. This furthers red tape relief efforts by minimizing the requirement to read multiple rules to understand a single subsection.

4. The agency has amended ARM 24.12.102 and 24.12.107 as proposed.

5. The agency has repealed ARM 24.12.101, 24.12.103, 24.12.104, 24.12.105, 24.12.106, 24.12.108, 24.12.109, and 24.12.110 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ JOHN ELIZANDRO
John Elizandro, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.23.301 and 24.23.304 and the repeal of ARM 24.23.313 pertaining to the job growth incentive tax credit	)))))	NOTICE OF ADOPTION AND REPEAL

TO: All Concerned Persons

1. On June 9, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-23-404 regarding the public hearing on the proposed changes to the above-stated rules, at page 511 of the 2023 Montana Administrative Register, Issue No. 11.

2. On June 29, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.23.301 and 24.23.304 as proposed.

4. The agency has repealed ARM 24.23.313 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ JOHN ELIZANDRO
John Elizandro, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 25, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2023. This table includes notices in which those rules adopted during the period February 10, 2023, through July 21, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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